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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B5

Date: **MAY 02 2011**

Office:



FILE:



IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching your decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, [REDACTED] denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting firm. It seeks to employ the beneficiary permanently in the United States as a project manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The Director determined that the beneficiary's academic credentials could not be accepted to qualify the beneficiary as an advanced degree professional.

The AAO issued a notice of intent to deny on March 10, 2010, informing the petitioner of contradictory information in the record raising concerns as to the validity of the job offer, the petitioner's company itself, as well as the petitioner's ability to pay the proffered wage and the beneficiary's academic credentials.<sup>1</sup>

The AAO additionally noted that the petitioner's status as reflected on the state of Maine's website<sup>2</sup> was "administratively dissolved" and had been since October 25, 2005. The AAO further stated:

We were unable to find any evidence of corporate registration for your corporation in New Hampshire or Illinois, the other locations listed on the Maine letterhead. It is noted that the job opportunity as set forth on the ETA 750 is located in Portland, Maine. If the petitioner is dissolved, then the ETA 750 is no longer valid for the opportunity described therein and the case is moot. A labor certification for a specific job offer is valid only for the particular job opportunity and for the area of intended employment stated on the Form ETA 750. 20 C.F.R. § 656.30(c)(2). It seems that the petitioner intends to employ outside the terms of the Form ETA 750. *See Sunoco Energy Development Company*, 17 I&N Dec. 283 (change of area of intended employment).

The AAO additionally requested evidence of the petitioner's ability to pay the proffered wage in view of the multiple beneficiaries that the petitioner has sponsored.

In the notice of the intent to deny, the AAO specifically alerted the petitioner that failure to respond to the notice may result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>2</sup> *See* [http://icrs.informe.org/nei-sos.icrs/ICRS?Login=norm&Action=addl\\_address&corp\\_id=2](http://icrs.informe.org/nei-sos.icrs/ICRS?Login=norm&Action=addl_address&corp_id=2), ((accessed Feb. 25, 2010) and incorporated into the record of proceeding)).

Because the petitioner failed to respond to the notice of intent to deny, the AAO is dismissing the appeal.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.